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CLIENT ALERT

NEW OIG GUIDANCE ON EXCLUSIONS FROM FEDERAL HEALTH CARE PROGRAMS

On May 8, 2013, the Office of Inspector General (“OIG”) released an “Updated [Special Advisory Bulletin](#) on the Effect of Exclusion from Participation in Federal Health Care Programs” (the “Bulletin”). The Bulletin serves as the first comprehensive update to the OIG’s guidance on federal health care program exclusions since September 1999, expanding the focus of such guidance to encompass the OIG’s expectations for organizations’ screening against the OIG’s List of Excluded Individuals and Entities (“LEIE”).

Important topics discussed in the Bulletin include:

- The scope and effect of an OIG exclusion, including the types of secondary items or services related to patient care that should not be provided by an excluded person or company;
- The scope of the payment prohibition, and the potential liability for an organization employing or contracting with an excluded person or company;
- How an organization should determine which employees and contractors should be screened against the LEIE, and how screening requirements and potential liabilities relate to employees or subcontractors of an organization’s vendors;
- Best practices for an organization’s screening of employees and contractors against the LEIE, such as printing screen-shots with LEIE search results, searching for all possible name matches (such as a maiden name), and verifying the employees’ and contractors’ identities through Social Security Numbers or Employer Identification Numbers; and
- A recommendation that an organization utilize the OIG’s [Self-Disclosure Protocol](#) (updated as of April 17, 2013) if it discovers that an employee or contractor is excluded. The recently updated Self-Disclosure Protocol incentivizes health care providers to self-disclose by reducing both the potential penalty calculation and the likelihood that the OIG will require a Corporate Integrity Agreement.

Of note, the Bulletin indicates that organizations do not need to check the General Services Administration’s System for Award Management (“SAM”) or other databases for the purpose of screening OIG-excluded individuals or entities – the LEIE is to be the primary source of information for such exclusions. Organizations may still be required to check the SAM or other

databases, however, to the extent they participate in other federal programs not related to health care.

With the Bulletin's release, we would like to reiterate the importance of having a thorough screening protocol in place, so as to minimize the risk of employing or contracting with an excluded individual or entity.

Please contact Attorneys Anthony Cichello (ajc@kb-law.com), Anjali Waikar (awaikar@kb-law.com), Jennifer Gallop (jgallop@kb-law.com), or Robert Griffin (rgriffin@kb-law.com) if you have any questions about the Bulletin or you would like assistance with your LEIE screening policies and procedures.